

NTSB ORDER NO.  
EM-74

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D. C.  
on the 3rd day of August 1979.

OWEN W. SILER, Commandant, United States Coast Guard,

vs.

OSCAR F. WOODS, JR. Appellant

ME-69

OPINION AND ORDER

Appellant seeks reversal of the commandant's decision affirming a 9-month suspension of his license (No. 443060).<sup>1</sup> The Commandant also sustained findings that appellant's negligence in piloting the SS KEY TRADER on the Lower Mississippi River had contributed to that vessel's collision with the SS BAUNE on January 18, 1974, resulting in fire, 16 fatalities, and loss of both vessels.

Appellant appealed to the Commandant (Appeal No. 2096) from the initial decision of Administrative Law Judge Dee C. Blythe, rendered after a full evidentiary hearing.<sup>2</sup> The law judge found that as the KEYTRADER was proceeding downriver appellant wrongfully initiated a starboard-to-starboard passing with the upbound BAUNE and that he failed to reduce speed although no signal or radio communication was heard from the other vessel.<sup>3</sup> The law judge considered the catastrophic nature of the accident and appellant's contribution thereto as factors warranting a prolonged suspension

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<sup>1</sup>Admiral Siler has been succeeded by Admiral J.R. Hayes as Commandant during pendency of this appeal.

<sup>2</sup>Copies of the decisions of the Commandant and law judge are attached.

<sup>3</sup>The law judge also found further allegations that appellant proceeded at an immoderate speed in conditions of fog and reduced visibility, and that he wrongfully failed to sound fog signals as prescribed by the applicable statutory rules were not proved.

of his license.<sup>4</sup>

In his brief on appeal, appellant contends that: (1) The joinder of his hearing with that of the pilot aboard the BAUNE and the master of the KEYTRADER was a denial of due process;<sup>5</sup> (2) a starboard-to-starboard passing was required under the circumstances; (3) he navigated the KEYTRADER with all due care and caution; (4) the BAUNE's pilot received a 3-month suspension and no basis exists for the greater sanction in the case; and (5) only the pilotage endorsement of appellant's license applicable to the reach of the river in which the collision occurred should be subject to sanction. Counsel for the Commandant has not submitted a reply brief.

Upon consideration of the brief and the record, the Board concludes that the ultimate findings of the law judge and the Commandant are supported by reliable, probative, and substantial evidence. We adopt those findings as our own. Moreover, we agree that the sanction is warranted.

The KEYTRADER, loaded with petroleum products, was proceeding downriver after anchoring at Mile 13.5 above Head of Passes (AHP) overnight because of fog, and waiting until the early afternoon of January 18 for visibility conditions to improve. Near Mile 9.3, appellant made several radio broadcasts of his vessel's position and direction to upbound traffic and receive no response. As the KEYTRADER approached Wilder Flats light, appellant observed the M/V Troll Forest at anchor on a northbound heading. The KEYTRADER passed between that vessel and the west riverbank at 1:55 p.m. (local time). Three vessels in line, on northbound headings, were then sighted ahead. Appellant believed they were in the general anchorage located along the right descending bank, and changed course from 132° to 127° to pass clear on the left descending side of the channel. The first two vessels were at anchor but it was soon apparent that the third vessel, viz. the BAUNE, was underway.

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<sup>4</sup>Appellant's license qualifies him, inter alia, to serve as a first-class pilot of steam and motor vessels of any gross tons upon the Upper and Lower Mississippi River, Mile 839.1, U.M.R., and the sea via South or Southwest Pass, Mississippi River Gulf Outlet, between Light 117 and the sea; Ohio River Mile 981.0 to Mile 602.1; Illinois River and Waterway Mile 0.0 to Mile 320.1 [Marine Board (M.B.) Tr. 17].

<sup>5</sup>Appellant and the master of the KEYTRADER consolidated their briefs before the Commandant who rendered a signal decision applicable to both. Since they have filed separate appeals to the Board, a separate order is being issued with respect to the master.

The BAUNE was on a steady course of 330°. At 1:56 p.m., with a distance of 1.25 miles separating the vessels, appellant's vessel sounded a two-blast whistle signal for a starboard-to-starboard passage. It was not returned and a subsequent radiotelephone call to the BAUNE also went unanswered. The KEYTRADER maintained its course and speed of half ahead for 2 minutes until the distance was 3/4 mile, when the danger signal was blown along with another two-blast passing signal. Appellant then ordered 20° left rudder and full ahead "to try to cushion the collision because there was no way to avoid it" (Tr. 747). The master ordered a general alarm, emergency full astern, and blew the danger signal again. All of these maneuvers were too late to prevent a collision at 2:01 p.m. near Mile 6.2 (AHP) with the other vessel's bow penetrating some 20 feet into the KEYTRADER's forward cargo tanks on the starboard side.

The location of the TROLL FOREST and the BAUNE were in dispute, but appellant claimed that both vessels were near midriver (Tr. 737, 743). He also estimated that the KEYTRADER passed 300 feet west of the TROLL FOREST, and 700 feet from the right descending bank (Tr. 718, 724). Since the river is 3150 feet wide at that point (M.B., Tr. 202), it may well be questioned whether the TROLL FOREST was not in fact anchored some 500 feet west of midriver. In any event, the KEYTRADER would have been positioned westward of the course held by the BAUNE was navigating in a comparatively straight section of the river and thus could be expected to maintain its course. On a starboard passage, the KEYTRADER would be heading diagonally across the BAUNE's projected path upbound. It was not a situation in which the vessels were established on parallel courses to each other's starboard and, simply by keeping their courses, would make a safe starboard-to-starboard passage.<sup>6</sup> Rather, it was an attempt to force the downbound vessel on the starboard side of opposing traffic while crossing a congested river channel.<sup>7</sup> The vessels were on intersecting courses at close range and appellant should have recognized, as did the master of the KEYTRADER, that "it would have been a very close passing" (Tr. 817). It was a situation fraught with danger, further heightened by the other vessel's failure to acknowledge passing signals. Under the prevailing circumstances, appellant should not have initiated the starboard passage and is primarily responsible for the ensuing collision.

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<sup>6</sup>The City of Macon, 92 F.207 (3 Cir. 1899).

<sup>7</sup>Appellant testified: "I would have swung my course and headed down river once I got across" (Tr. 738).

Cases which hold that assent is not required when vessels are positioned for a proper starboard passing<sup>8</sup> have no application here. Moreover, we find that appellant should have reduced speed immediately when he heard no response. Appellant argues that he would have turned broadside due to the current if he had put his engines astern. We agree with the law judge that "... there is no satisfactory showing that this possibility was anything to compare with the dangers attendant upon the maneuver he attempted, or that he could not have stopped his vessel" (I. D. 39-40, 43).<sup>9</sup> In connection with appellant's further argument that the collision was due to a sudden turn to starboard by the BAUNE, this is not established by the record, and the BAUNE's course recorder indicates that any such turn would have occurred at the last moment when collision was imminent.<sup>10</sup>

If litigants' rights are adequately protected, cases having common questions of law or fact may be joined.<sup>11</sup> Appellant argues that the law judge failed to protect his rights in considering testimony given by the pilot of the BAUNE in his own behalf. This pilot's version of events was relevant evidence and he was subjected to extensive cross-examination. We see no reason for excluding it. Moreover, we have found that appellant's own testimony, taken with other competent evidence of record, proves the violations charged.

Appellant notes that the law judge also relied upon an unsworn statement concerning the TROLL FOREST's location by its first officer which is not part of the record in this case. This error is not so prejudicial that it cannot be cured by the Commandant's findings made without regard to the precise location of the TROLL FOREST (C.D. 11-13) and our own which uses appellant's own version. We do not find, therefore, that appellant was denied due process by reason of the joint hearing.

Turning to sanction, we find no merit in appellant's argument that bias on the part of the law judge is shown by imposition of a 3-month suspension against the BAUNE's pilot. On the contrary,

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<sup>8</sup>See, e.g., New York, New Haven & H.R. Co. v. Baltimore & Ohio R. Co., 236 F. 2d 228, 231e(2d Cir. 1956) and cases cited therein.

<sup>9</sup>Commandant v. walker, 2 N.T.S.B. 2799, 2801.

<sup>10</sup>Administrative Law Judge Exhibit #1.

<sup>11</sup>United States v. Barraza-Leon, 575 F. 2d 218 (9th Cir. 1978): Barrus Construction Co. v. N.L.R.B., 483 F. 2d 191 (4th Cir. 1973).

based on our review of the record, the sanctions fairly reflect the degree to which each pilot's negligence contributed to the casualty. In appellant's case, the purpose of the sanction is "to insure more caution on his part in future situations where a casualty may be avoided by observing rules of prudent seamanship".<sup>12</sup> This applies generally to all pilot services he may be called upon to perform. We perceive no reason for modification of the sanction in any respect.

ACCORDINGLY, IT IS ORDERED THAT:

1. The instant appeal be and it hereby is denied; and
2. The order of the Commandant affirming the suspension of appellant's license by the law judge be and it hereby is affirmed.

KING, Chairman, McADAMS and GOLDMAN, Members of the Board, concurred in the above opinion and order. DRIVER, Vice Chairman and BURSLEY, Member, did not participate.

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<sup>12</sup>Commandant v. Ernser, NTSB Order No. EM-72, adopted December 1, 1978, at page 8.